

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

COBBLESTONE WIRELESS, LLC, <i>Plaintiff,</i>	§	
	§	
	§	
v.	§	
	§	CASE NO. 2:22-cv-00477-JRG-RSP
T-MOBILE USA, INC. <i>Defendant,</i>	§	(Lead Case)
	§	
	§	JURY TRIAL DEMANDED
NOKIA OF AMERICA CORPORATION, ERICSSON INC. <i>Intervenors.</i>	§	
	§	
	§	
COBBLESTONE WIRELESS, LLC, <i>Plaintiff,</i>	§	
	§	
	§	
v.	§	
	§	CASE NO. 2:22-cv-00474-JRG-RSP
AT&T SERVICES INC.; AT&T MOBILITY LLC; AT&T CORP., <i>Defendants,</i>	§	(Member Case)
	§	
	§	JURY TRIAL DEMANDED
	§	
NOKIA OF AMERICA CORPORATION, ERICSSON INC. <i>Intervenors.</i>	§	
	§	
	§	
COBBLESTONE WIRELESS, LLC, <i>Plaintiff,</i>	§	
	§	
	§	
v.	§	
	§	CASE NO. 2:22-cv-00478-JRG-RSP
CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS, <i>Defendant,</i>	§	(Member Case)
	§	
	§	JURY TRIAL DEMANDED
	§	
NOKIA OF AMERICA CORPORATION, ERICSSON INC. <i>Intervenors.</i>	§	
	§	
	§	

**DEFENDANTS' AND INTERVENORS' RESPONSE TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT REGARDING STANDING (DKT. NO. 145)**

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I. INTRODUCTION

The burden of proving standing falls on the Plaintiff. Standing is not a true affirmative defense, and therefore there is no burden on Defendants and Intervenor to prove lack of standing. Instead, Plaintiff must prove standing by demonstrating a chain of title back to the named inventor. Since Plaintiff failed to provide proof of title back to the named inventor in its summary judgment motion, Plaintiff failed to carry its burden and summary judgment should be denied.

II. RESPONSE TO THE STATEMENT OF THE ISSUE

Cobblestone has not shown it has constitutional or prudential standing because it has not proven that it had chain of title back to the named inventor or inventors of the Asserted Patents and therefore summary judgment should be denied.

III. RESPONSE TO SUMF

Defendants and Intervenor do not dispute any facts in the SUMF. However, as shown below, the undisputed material facts do not establish the relief that Cobblestone has requested.

IV. LEGAL STANDARD

“Once challenged, the burden of establishing standing falls on the Plaintiff.” *Mobile Telcoms. Techs. v. ZTE United States*, 2016 U.S. Dist. LEXIS 199667, at *7 (E.D. Tex. 2016) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). “[A] plaintiff carries its burden of establishing standing by demonstrating a chain of title back to the named inventor or inventors of the asserted patent.” *Id.*

“[L]ack of standing, like failure to state a claim, is not a true affirmative defense.” *Kanaan v. Yaqub*, No. 21-cv-09591-PCP, 2023 U.S. Dist. LEXIS 229220, at *8 (N.D. Cal. 2023); *League of Women Voters of South Dakota v. Noem*, 4:22-CV-04085, Dkt. No. 32, (S.D. S. Dak. Dec. 12, 2022) (“[L]ack of standing is not an affirmative defense.”); *Nationstar Mortg., LLC v. Jackson*, No. 3:23-cv-1404-HES-MCR, 2024 U.S. Dist. LEXIS 107170, at *19 (M.D. Fla. 2024) (“Lack of

standing is not an affirmative defense, but rather is a matter implicating the court’s subject matter jurisdiction.”); *G & G Closed Cir. Events, LLC v. Benjamin*, No. 22-cv-04144-SI, 2023 U.S. Dist. LEXIS 64301, at *9 (N.D. Cal. 2023) (“Because standing must be affirmatively proven by plaintiffs, lack of standing is a negative defense rather than an affirmative one . . .”).

V. ARGUMENT

Cobblestone has neither met its burden to establish standing nor its burden to establish that no genuine factual dispute remains regarding standing. Cobblestone has failed to provide evidence showing it is a successor in title to the Asserted Patents.

A. Cobblestone Mischaracterizes the Burden of Proof Regarding Standing.

Cobblestone bears the burden of establishing it has standing to assert its claims in the instant case. *Mobile Telcoms. Techs.*, 2016 U.S. Dist. LEXIS 199667, at *7. Lack of standing is not a true affirmative defense. *Kanaan*, 2023 U.S. Dist. LEXIS 229220, at *8; *League of Women Voters of South Dakota*, Dkt. No. 32; *Nationstar Mortg., LLC*, 2024 U.S. Dist. LEXIS 107170, at *19; *G & G Closed Cir. Events, LLC*, 2023 U.S. Dist. LEXIS 64301, at *9. Cobblestone’s motion fails to meet this burden.

In its motion, Cobblestone incorrectly applies the burden of proof standard under *Celotex* by stating:

If, as here, *the nonmovant bears the burden of proof* on the claim or defense that is the subject of the summary judgment motion, the movant may discharge its burden by showing that there is an *absence of evidence* to support the nonmovant’s case. *Celotex*, 477 U.S. at 323, 325; *Byers v. Dallas Morning News, Inc.*, 209 F.3d 419, 424 (5th Cir. 2000).

(Mot. at 5).

As the quote above suggests, however, *Celotex* does not apply here. Cobblestone is the *movant* here and sought a judgment in its favor on the issue of standing. Therefore, *Cobblestone as the plaintiff* bears the burden of proffering evidence sufficient to show it has standing. From an

evidentiary standpoint, however, Cobblestone failed to do so. Cobblestone fails to include at least six documents showing chain of title of the Asserted Patents. As a result, Cobblestone cannot carry its summary judgment burden, and Defendants and Intervenor only need to point out this fact to survive summary judgment.

B. For Each Asserted Patent, Cobblestone Has Failed to Show That No Genuine Dispute of Material Fact Exists.

Cobblestone's motion fails to provide evidence "demonstrating a chain of title back to the named inventor or inventors of the asserted patent." *Mobile Telcoms. Techs.*, 2016 U.S. Dist. LEXIS 199667, at *7. Thus, genuine disputes of material fact exist as to whether Cobblestone has standing to assert infringement of the Asserted Patents.

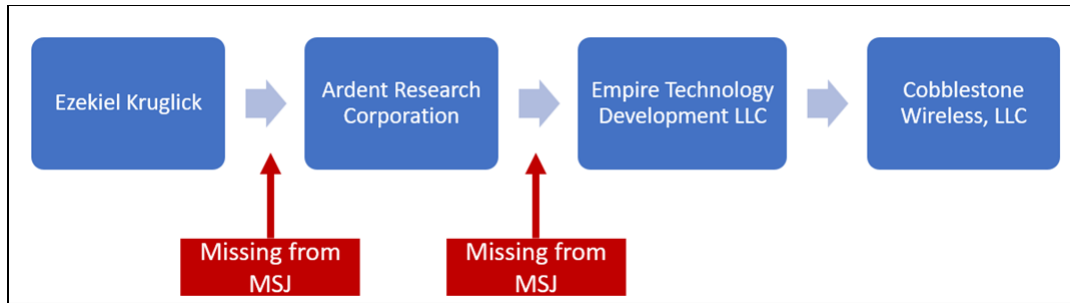
1. Cobblestone has not produced agreements sufficient to show chain of title of the Asserted Patents.

Cobblestone fails to show chain of title back to the named inventors of the Asserted Patents. Instead, Cobblestone requests a summary judgment finding in its favor by arguing that an agreement from Empire to Cobblestone (Dkt. 145-2 (Ex. A to Mot.)) and a Confirmatory Agreement (Dkt. 145-3 (Ex. B to Mot.)) are sufficient to demonstrate standing. However, this is insufficient. Empire is not a named inventor, and Cobblestone has not carried its burden to dispose its present standing dispute.

As exemplified below, at least *six* different agreements relevant to the chain of title of the Asserted Patents are absent.

a) The '888 Patent Chain of Title

Below is a simplified and annotated representation of the chain of title for the '888 Patent:



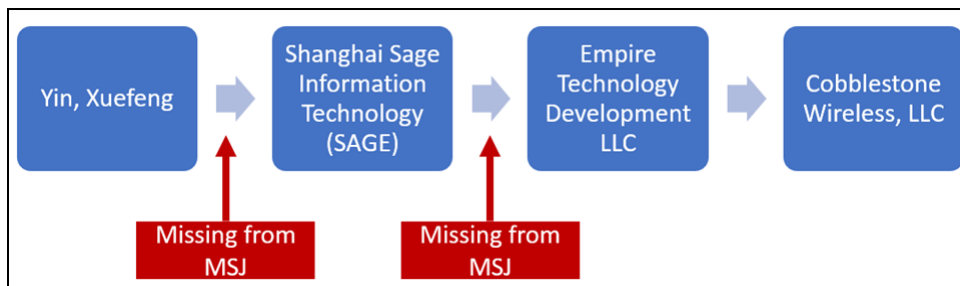
As shown, the chain of title for the '888 Patent begins with Ezekiel Kruglick and Ardent Research Corporation. Cobblestone does not provide any evidence of any assignment of the '888 Patent from either Mr. Kruglick or Ardent Research Corporation in its motion for summary judgment. Thus, at least the following agreements are missing from Cobblestone's argument, which are required to establish its standing:

- Agreement between Ezekiel Kruglick and Ardent Research Corporation
- Agreement between Ardent Research Corporation and Empire Technology Development LLC

See Dkt. 145-6 (T-Mobile's First Suppl. Resp. to Rog. No. 12).

b) The '347 Patent Chain of Title

Below is a simplified and annotated representation of the chain of title for the '347 Patent:



As shown, the chain of title for the '347 Patent begins with Xuefeng Yin and Shanghai Sage Information Technology ("SAGE"). Cobblestone did not present any evidence of any assignment of the '347 Patent from either Mr. Yin or SAGE in its summary judgment motion.

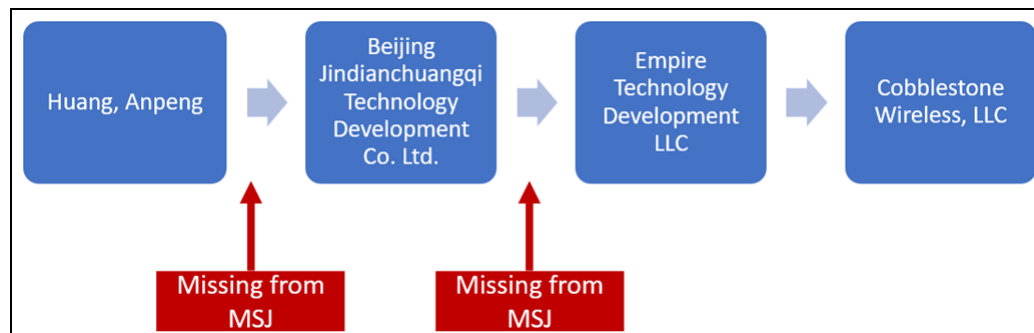
Thus, at least the following agreements are missing from Cobblestone's motion, which are required to establish its standing:

- Agreement between Xuefeng Yin and Shanghai Sage Information Technology Co. Ltd.
- Agreement between Shanghai Sage Information Technology Co. Ltd. and Empire Technology Development LLC

See See Dkt. 145-6 (T-Mobile's First Suppl. Resp. to Rog. No. 12).

c) The '361 Patent Chain of Title

Below is a simplified and annotated representation of the chain of title for the '361 Patent:



As shown, the chain of title for the '361 Patent begins with Anpeng Huang and Beijing Jindianchuangqi Technology Development Co. Ltd. ("BJTD"). Cobblestone does not provide any evidence of any assignment of the '361 Patent from either Mr. Huang or BJTD in its motion for summary judgment. Thus, at least the following agreements are missing from Cobblestone's argument, which are required to establish its standing:

- Agreement between Anpeng Huang and Beijing Jindianchuangqi Technology Development Co. Ltd.
- Agreement between Beijing Jindianchuangqi Technology Development Co. Ltd. and Empire Technology Development LLC

See Dkt. 145-6 (T-Mobile's First Suppl. Resp. to Rog. No. 12).

With six different agreements missing, there clearly exists a genuine dispute of material fact as to whether Cobblestone has standing to assert infringement of the Asserted Patents. Cobblestone has wholly failed to meet its evidentiary burden of “demonstrating a chain of title back to the named inventor or inventors of the asserted patent.” *Mobile Telcoms. Techs.*, 2016 U.S. Dist. LEXIS 199667, at *7.

2. Even if Cobblestone could produce agreements to show chain of title, those agreements are an insufficient basis to meet the burden for summary judgment.

Even if Cobblestone had provided evidence purporting to show standing, a genuine issue of fact would remain since that evidence cannot be authenticated.

Defendants and Intervenor attempted to reach the named inventors of the Asserted Patents through both Cobblestone and Hauge discovery. However, despite these efforts, Defendants and Intervenor were only able to depose Mr. Kruglick. The other two named inventors could not be located and could not be deposed to authenticate any documents.

Thus, in the absence of any authenticated evidence proving the fact of the matter, the inventors should be available for questioning at trial, along with Cobblestone’s representatives, to testify as to standing. Summary judgment is, therefore, inappropriate at this juncture.

VI. CONCLUSION

For the forgoing reasons, Defendants and Intervenor respectfully request that this Court reject Cobblestone’s Motion for Summary Judgement on Defendants and Intervenor’s Affirmative Defenses Alleging Lack of Standing.

Dated: July 17, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served by e-mail on July 17, 2024 on all counsel who have consented to electronic service.

/s/ David S. Frist
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